CF0000057819

(02)

Single Bench (Circuit)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.
Cr. A. No. 248 of 1990.

Appellant :..... Arjunsingh, son of Harisingh, Kolta, resident of Nayapara, District Raipur.
(IN JAIL)

versus

Respondent : ..... State of M.P.

.....

APPEAL AGINST THE JUDGMENT DATED 21.2.1990, PASSED BY SHRI K.N. KORI Ist ADDDL SESSIONS JUDGE RAIPUR. IN S.T.NO. 75/88 U/S 374 Cr.P.C.

.....

CONVICTION U/S 333 I.P.C. SENTENCE. 4 Yrs R.I.

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1-3-90
SC Pandey
1/3/90

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.248/1990

Arjunsingh

Vs.

State of M.P. (now State of Chhattisgarh)

Post for orders : 3.04.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.248/1990

Single Bench: Hon'ble Shri Justice **Dilip Raosaheb Deshmukh**

Arjun Singh

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

PRESENT: -
Ku. Samta Jain, learned counsel for the accused-appellant.
Shri Ashish Shukla, Govt. Advocate for the State.

JUDGMENT
(Delivered on 3-04-2006)

This appeal is directed against the judgment dated 21-02-1990 delivered by Shri K.L.Kori, 1st Additional Sessions Judge, Raipur Camp, Mahasamund in Sessions Case No.75/1998 whereby the appellant was convicted under Section 333 of I.P.C. and was sentenced to undergo rigorous imprisonment for 4 years.

2. Briefly stated the prosecution story is that on 02-10-1987 the appellant Arjun and co-accused Ravishankar & Purushottam were bringing "Beeja wood" in the bullock cart from Temri to Baloda. On way at about 8 P.M., they were intercepted by Forest Guard Sriram Sonwani PW-5 who asked the appellant Arjun to show permission for transporting "Beeja wood". When no such permission was shown, Forest Guard Sriram Sonwani PW-5 said that he would seize the wood being carried by the appellant. Upon this, the appellant assaulted him near the right elbow by a *lathi*. The appellant, co-accused Ravishankar and Purushottam thereafter went away with their bullock cart.

3. A written complaint was lodged by Sriram Sonwani PW-5 in Police Station-Saraipali on 03-10-1987 vide Ex.P-7. On medical examination at 10.50 A.M. on 03-10-1987, Dr. A.K.Sahu found deep wound on x the right elbow joint on the lateral side, bleeding profusely with pain and swelling thereon and restricting the movement of elbow joint of Sriram Sonwani. Duration of the injury was not mentioned. X-Ray was advised. Dr. P.K.Banerji, PW-1 took X-Ray of the right elbow of Sriram Sonwani and found fracture of the lower end of the right humerus. One Khaki dress of Sriram Sonwani having blood like stains was seized vide Ex.P-3, On 15-10-1987 some dried wood of *Ber & Neem* was seized from the appellant Arjun vide Ex.P-4. The bullock cart and the bullocks were also seized vide Ex.P-5 on the same day. After completion of investigation, the appellant & co-accused Ravishankar and Purushottam were prosecuted under Section-294, 333 read with Section-34 of IPC. The appellant abjured the guilt. The prosecution examined as many as 9 witnesses. The appellant examined 3 witnesses in defence. The learned trial Judge relying upon the evidence led by the prosecution convicted and sentenced the appellant Arjun as aforesaid in para-1 while acquitting co-accused Ravishankar & Purushottam.

4. Ku. Samta Jain, learned counsel for the appellant has argued that the testimony of Forest Guard Sriram Sonwani is wholly unreliable. It was also argued that since the trial Court on the evidence led by the prosecution, acquitted the co-accused Ravishankar & Purushottam, it ought not to have convicted the appellant Arjun on the same evidence. It was also pointed out that Dr. A.K.Sahu P.W.9 had opined that duration of the injury sustained by Sriram Sonwani was 6 hours prior to his medical examination conducted on 03-10-1987 at 10.50 A.M. It was

thus highly improbable that Sriram Sonwani would have sustained injury at the hands of the appellant at 08 P.M. on 02-10-1987.

5. It was also contended that the appellant has been falsely implicated. It was alleged that the appellant was transporting "Beeja Wood" whereas seizure memo Ex.P-4 revealed that dried wood of *Ber & Neem* tree was seized. The testimony of Sriram Sonwani in the end of para-1 that the appellant Arjun had assaulted thrice on him by the lathi on his right hand was wholly unreliable since no such corresponding external injuries were noticed by Dr. A.K.Sahu PW-9. In the written complaint Ex.P-7 lodged by Sriram Sonwani, there was interpolation in the number of injuries inflicted by the appellant.

6. It was also contended by learned counsel for the appellant that witness Rameshwar Pariha PW-6 had stated that it was so dark at the time of occurrence that he could neither see the bullock cart nor identify the wood thereon. Therefore his testimony that he had seen the appellant assaulting Sriram Sonwani by lathi is rendered unreliable. Chhelia PW-7 had in para-4 of his testimony stated that the quarrel was started by Sriram Sonwani who started abusing Arjun and had also pressed the foot of Arjun with his shoes. Thereafter, a scuffle ensued between Arjun and Sriram Sonwani. It was urged that it could not be ruled out that the injury was sustained by Sriram Sonwani during fall since P.K.Benerji PW-1 had opined that the grievous injury on the right elbow of Sriram Sonwani could be caused by fall. Lastly, it was contended that the evidence led by the defence also revealed that Sriram Sonwani was under the influence of liquor and had not informed the vaccinator Swadeshi Ram Sahu DW-2 while receiving first aid that

someone had assaulted him by a *lathi*. On these grounds, it was prayed that the conviction and sentence awarded by the learned trial Judge should be set aside. On the other hand, Shri U.K.S.Chandel, learned Panel Lawyer has argued in support of impugned judgment.

7. Having heard rival contentions, I have perused the record. The testimony of Chhelia PW-7 clearly shows that the appellant had told Sriram Sonwani that the wood on his bullock cart was from his house, and therefore, he should not be obstructed. Upon this, Sriram Sonwani started quarrel by abusing the appellant Arjun. The testimony of Sriram Sonwani PW-5 and Chhelia P.W.7 that the appellant assaulted Sriram Sonwani thrice by a *lathi* on his right elbow joint is rendered unreliable since no such corresponding injuries were found on Sriram Sonwani. It is not possible that all the three blows would be dealt on exactly the same part of the body. The written report Ex.P.7 speaks of only two assaults by *lathi* and it has some interpolation in the number of assaults.

8. Dr. A.K.Sahu P.W.9 has proved injury report Ex.P.10-A which shows that he had examined Sriram Sonwani at 10.50 A.M. on 3.10.87. In cross-examination he stated that duration of the injury sustained by Sriram Sonwani was two hours. In the next breath he said it was six hours. Even if this is accepted, it is not possible that the injury found on Sriram Sonwani was sustained by him at 8.00 P.M. on 2.10.87.

9. If the appellant had assaulted thrice with a *lathi*, it would have caused lacerated wounds and not a pointed wound. The nature of injury sustained by Sriram does not rule out the possibility that he fell on

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some pointed object during the scuffle with the appellant. Dr. A.K.Gupta P.W.9 also did not mention the size of the wound in his report. Vaccinator Swadeshi Ram Sahu D.W.-2 who gave first aid immediately after the occurrence to Sriram Sonwani clearly stated that Sriram Sonwani had not informed him about any assault by a *lathi* on his right hand. Goverdhan DW-3 also proved that Sriram Sonwani was under the influence of liquor in the night of the occurrence and had asked to take him to Baloda. Paragraph-5 of the testimony of Chhelia PW-7 also shows that when Sriram Sonwani had stepped his shoe on the feet of the appellant Arjun, a quarrel had ensued. Arjun was holding a *lathi* and there was a scuffle between the appellant and Sriram Sonwani.

10. Rameshwar P.W.6 stated that he saw the quarrel from a distance of about 40 yards. He stated that it was a dark night and could not even see whether the cart was pulled by bulls or by cows. He stated that he could not tell which type of wood was loaded in the bullock cart. He also did not deny the defence suggestion that Sriram was under the influence of liquor, which gives credence to the testimony of Goverdhan P.W.3 that Sriram Sonwani was under the influence of liquor.

11. Chhelia P.W.7 is a Chowkidar under Sriram Sonwani P.W.5. The testimony of Sriram that the appellant was carrying Beeja wood in the bullock cart is also rendered unreliable since wood seized from the appellant vide seizure Ex.P.7 was dried wood of *Neem* and *Ber* tree. His testimony clearly shows that despite insistence by Arjun that the wood is from his house, Sriram quarreled, abused and stepped on the foot of Arjun. It also shows that both the appellant and Sriram were pulling the *lathi*. Under these circumstances, it cannot be ruled out

that during the scuffle, Sriram fell on some pointed object whereby a pointed wound was caused near the right elbow. Dr. Banerjee P.W.1 has admitted that the fracture sustained by Sriram could be caused by a fall. There is no doubt that a pointed injury would not have been caused if the appellant had assaulted Sriram thrice by a *lathi*. It has also to be noticed that co-accused Ravishankar and Purushottam were acquitted by the trial Judge. Rameshwar P.W.6 and Chhelia P.W.7 did not attribute any overt act to them. Thus, it cannot be ruled out that the allegations in the complaint Ex.P.7 have an element of falsity and concoction.

12. Having thus considered the evidence led by the prosecution and the defence in its entirety, in the facts and circumstances mentioned above, the possibility that Sriram had sustained the grievous injury due to a fall on some pointed object cannot be ruled out. The appellant is thus entitled to the benefit of doubt.

13. In the result the appeal is allowed. Conviction of the appellant-Arjun for an offence under Section 333 of the I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted after giving the benefit of doubt. Bail bonds of the appellant stand cancelled.

Sd/-
Dilip Raosaheb Deshmukh
Judge .